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8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. R-1998

12 DIANA L. HOMYAK
13 5300 Hackberry Lane, #129
Sacramento, CA 95814

A C C U S A T I O N

14 Respiratory Care Practitioner License No. 22926

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Respiratory Care Board of California, Department of
21 Consumer Affairs.

22 2. On or about April 9, 2003, the Respiratory Care Board issued Respiratory
23 Care Practitioner License Number 22926 to Diana L. Homyak (Respondent). The Respiratory
24 Care Practitioner License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on February 28, 2006, unless renewed.

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3. This Accusation is brought before the Respiratory Care Board (Board),

4. Section 3710 of the Code states: “The Respiratory Care Board of

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, or attempting to induce another person to violate, or attempting to do so directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, or attempting to do so directly or indirectly, any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

“(l) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

7. Section 3755 of the Code states:

“The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect

1 respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of
2 clearly administering directly or indirectly inappropriate or unsafe respiratory care
3 procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques,
4 and violation of any provision of Section 3750. The board may determine unprofessional
5 conduct involving any and all aspects of respiratory care performed by anyone licensed as
6 a respiratory care practitioner."

7 COST RECOVERY

8 8. Section 3753.5, subdivision (a) of the Code states:

9 "In any order issued in resolution of a disciplinary proceeding before the board, the
10 board or the administrative law judge may direct any practitioner or applicant found to have committed
11 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
12 prosecution of the case."

13 9. Section 3753.7 of the Code states:

14 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
15 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
16 and service fees."

17 10. Section 3753.1 of the Code states:

18 "(a) An administrative disciplinary decision imposing terms of probation may include,
19 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
20 monitoring the probation. "

21 FIRST CAUSE FOR DISCIPLINE

22 (Negligence, Incompetence, Changing a doctor's orders)

23 11. Respondent is subject to disciplinary action under sections 3750(f)
24 [negligence], 3750(l) [changing the prescription of a physician], and 3750(o) [incompetence] in
25 that she administered medication without a physician's order and failed to chart the treatment in the
26 patient's record. The circumstances are as follows:

27 12. On or about August 5, 2004, respondent was employed as a respiratory
28 therapist at Mercy San Juan Medical Center (MSJMC) in Carmichael, California, and was

1 assigned to the emergency department. Patient A., a 34 year old female, was admitted on August
2 5, 2004 for episodic shortness of breath. In the two weeks prior to her admission at Mercy San
3 Juan Hospital, she had two very severe episodes of shortness of breath. Patient A.'s primary care
4 physician referred her to the emergency department at MSJMC for further evaluation. Patient A.
5 was found to have leukocytosis and was admitted to MSJMC. Dr. M. diagnosed acute dyspnea,
6 and gave medication orders for Zosyn 3.375 grams every six hours, Zithromax 500 mg every
7 twenty four hours, and to treat the patient continuously with cool mist.

8 13. On August 5, 2004, respondent administered a two hour continuous
9 nebulizer treatment containing three milliliters of Albuterol to Patient A. Respondent admitted to
10 P.C., the nurse treating Patient A., that she started the Albuterol treatment instead of the cool mist
11 ordered by Dr. M. Respondent stated that she knew that Dr. M. had not ordered Albuterol for
12 Patient A. Further, respondent failed to chart the Albuterol treatment.

13 14. Therefore, respondent's act of administering Albuterol without doctor's
14 orders and failing to chart the Albuterol treatment is a violation of code sections 3750(f)
15 [negligence], 3750(l) [changing a physician's orders], and 3750(o) [incompetence.]

16 SECOND CAUSE FOR DISCIPLINE

17 (Unprofessional conduct; falsifying records)

18 15. Paragraphs 11 through 13 are incorporated herein.

19 16. Respondent is subject to disciplinary action under sections 3750(k) [failure
20 to chart] and 3755 [unprofessional conduct] in that she administered Albuterol to a patient without
21 doctor's orders and failed to chart the treatment.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

25 1. Revoking or suspending Respiratory Care Practitioner License Number
26 22926, issued to Diana L. Homyak.

27 2. Ordering Diana L. Homyak to pay the Respiratory Care Board the costs of
28 the investigation and enforcement of this case, and if placed on probation, the costs of probation

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monitoring;
3. Taking such other and further action as deemed necessary and proper.
DATED: September 28, 2005

Original signed by Christine Molina for: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant